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CS

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/313,534    05/13/99    ROMERO

A    4830.P-RE

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HM12/1005

EXAMINER

MORRIS, P

ART UNIT

PAPER NUMBER

1625

DATE MAILED:

10/05/01

10/05/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/313,534

Applicant(s)

Romero

Examiner

T. Morris

Group Art Unit

1625

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 7/26/01
- ☒ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-12 is/are pending in the application.
- Of the above claim(s) 9-12 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-8 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

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## **DETAILED ACTION**

### ***Reissue Applications***

Claims 1-8 are consideration in this application.

Claims 9-12 remain held withdrawn from consideration as being drawn to nonelected subject matter 37 CFR 1.142(b).

### ***Continued Prosecution Application***

Again, to clarify the record, there was never any formal interview of December 4, 2000 with the alleged attorney of record. The examiner NEVER AGREED that the filing of the present CPA, after two years from the grant of the original patent would have no impact on the applicants' right to file to enlarge the scope of the claims, that are subject of the instant reissue. This is a false and inaccurate allegation by applicants.

Again, a CPA is a technically/legally a new application. Hence, applicant has now added an additional issue of broadening the claims outside the two year period. Further, new rule 37 CFR 1.176 is applicable herein.

Applicant has elected Group I, claims 1-8, with traverse. The traversal is on the grounds that a search can be made without any serious burden. This is not found persuasive for the reasons clearly set forth in Paper no. 12. This is a reissue application. The subject matter of the original patent claims are held to be constructively elected. Hence, claims 9-12 are held withdrawn from consideration as being drawn to nonelected subject matter.

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Again, the reissue oath or declaration filed December 11, 2000 application is defective because none of the errors which are relied upon to support the reissue application are errors upon which a reissue can be based. See 37 CFR 1.175(a)(1) and see MPEP 1414.

The reissue statute - 35 U.S.C. 251 - provides for the reissue of patents whenever the patent is deemed wholly or partly inoperative or invalid through error without any deceptive intention. Applicant fails to allege that the original patent is inoperative or invalid or fails to state the reason of a defective specification, or of patentee claiming more or less than patentee had the right to claim in the patent.

Contra to applicant's arguments in the instant response, applicant has added claims directed to inventions which are **separate and distinct from the invention defined by the original patent claims**. This has been clearly set forth in the record. The Office does not allow a reissue patent which does not correct any error in the original patent. Note 37 CFR 1.145 and new rule 1.176 effective November 7, 2000.

Again, the reissue oath/declaration filed with this application is defective because it fails to identify at least one error which is relied upon to support the reissue application. See 37 CFR 1.175(a)(1) and MPEP § 1414. There is no error in the original patent claims.

The reissue oath/declaration filed with this application is defective because it fails to contain a statement that all errors which are being corrected in the reissue application up to the time of filing of the oath/declaration arose without any deceptive intention on the part of the applicant. See 37 CFR 1.175 and MPEP § 1414.

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Claims 1-8 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

As clearly set forth in the record, there is no error in the original patent claims.

***Conclusion***

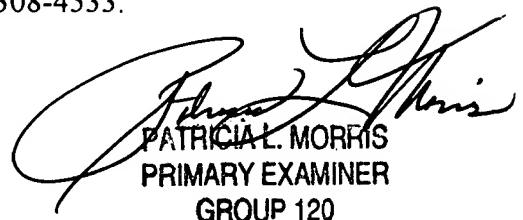
**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ms. Morris whose telephone number is (703) 308-4533.

plm

October 4, 2001

  
PATRICIA L. MORRIS  
PRIMARY EXAMINER  
GROUP 120